DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CA CR 05-1315

May 24, 2006

FREDRICK DEDMON THOMPSON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE CIRCUIT COURT OF PULASKI COUNTY
[NO. CR 2004-4499]

HONORABLE BARRY ALAN SIMS
JUDGE

AFFIRMED

In a bench trial, appellant Fredrick Thompson was found guilty of possession of cocaine with intent to deliver, possession of MDMA (Ecstasy) with intent to deliver, possession of Xanax with intent to deliver, and possession of marijuana, third offense. Appellant was sentenced to concurrent terms of 160 months in prison on each count. Appellant contends on appeal that the trial court erred in admitting the contraband into evidence over his chain-of-custody objection and that the evidence supporting the conviction is insufficient. We affirm.

Officer James McKenzie of Little Rock worked off-duty at Zimmerman's Exxon on South University. It was his responsibility to keep the parking lot clear of loiterers, particularly in the car-wash area where drug activity had taken place. On August 21, 2004, Officer McKenzie observed a SUV that had been sitting in a car-wash bay for a prolonged period of time without its occupants making use of the facilities. The passenger-side rear door of the vehicle was open, and McKenzie saw appellant sitting there attempting to roll what appeared to be a marijuana cigarette. McKenzie testified that, when appellant saw him, appellant scattered the suspected marijuana onto the floorboard of the vehicle. McKenzie removed appellant from the vehicle and placed him in handcuffs. McKenzie said that he saw appellant put something into the back of his pants. From

there, McKenzie retrieved a plastic baggie containing what appeared to be cocaine. A further search of appellant's person yielded a Tylenol bottle that contained small pink pills, and other pills that McKenzie believed to be Xanax.

Officer McKenzie identified State's Exhibit One as the suspected cocaine that he had removed from appellant's pants; State's Exhibit Two as the suspected Xanax pills found in the Tylenol bottle taken from appellant's pocket; State's Exhibit Three as the pink pills that were also found in the Tylenol bottle; and State's Exhibit Four as the suspected marijuana he had seen appellant rolling into a cigarette. He testified that he gave these items to Detective Steve Pledger, a narcotics officer.

Detective Pledger testified that he received the suspected contraband from Officer McKenzie. Pledger field tested the suspected marijuana and received a positive reaction for marijuana. He also conducted a field test on the suspected cocaine, receiving a positive reaction for cocaine base. Detective Pledger testified that State's Exhibits One through Four were the items he had received from Officer McKenzie. He said that he sealed the items individually and assigned the property-tag number of 232911 to the suspected marijuana; tag number 231912 to the twenty-nine suspected Xanax pills; tag number 232913 to the nine pink pills that he believed to be MDMA; and tag number 323910 to the suspected cocaine. Together, he assigned these items the agency number 2004-LIT-18235 on the evidence-submission form by which the items were submitted to the Arkansas State Crime Lab. He stored the items in the property room until they were taken to the crime lab by Officer Terry Butler. Detective Pledger testified that the report from the crime lab revealing the test results bore the number 2-4-LIT-18235.

Felisia Lackey, a chemist at the crime lab, testified that she received and tested the items submitted under evidence number 04-LIT-18235. Her analyses showed that E1 contained cocaine weighing 3.5835 grams; E2 proved to be marijuana that weighed .6 grams; E3, consisting of twenty-six pills, was Xanax; and E4 was nine pills of MDMA.

Although appellant's challenge to the sufficiency of the evidence is his second point on

appeal, double jeopardy considerations require us to address this issue first. *Jones v. State,* 349 Ark. 331, 78 S.W.3d 104 (2002). In reviewing a challenge to the sufficiency of the evidence, we affirm if, viewing the evidence in the light most favorable to the State, there is substantial evidence to support the conviction. *Gilbert v. State,* 341 Ark. 601, 19 S.W.3d 595 (2000). Substantial evidence is evidence of sufficient force and character as to compel, with reasonable certainty, a conclusion beyond mere speculation or conjecture. *Engram v. State,* 341 Ark. 196, 15 S.W.3d 678 (2000), *cert. denied,* 531 U.S. 1081 (2001).

It is the appellant's argument that the evidence is insufficient because the chemist identified the items she received and tested by the numbers she assigned them at the crime lab, as opposed to State's Exhibits One through Four. We find no merit in this argument. The items the chemist received and tested bore the agency number assigned by Detective Pledger, number 2004-LIT-18235. Pledger field tested State's Exhibits One and Four, which tested positive for cocaine and marijuana, respectively, and which correspond to the findings of the chemist. Pledger also identified State's Exhibits Two and Three, respectively, as twenty-six pills of suspected Xanax and nine pills of suspected MDMA. The chemist testified that the twenty-six pills she received tested positive for Xanax, and that the nine pills she received were MDMA. We hold that there is substantial evidence to support a finding that the items of contraband received and tested by the chemist were those that had been found in appellant's possession.

Appellant also contends that the chain of custody for State's Exhibits One through Four was not established because neither Officer McKenzie nor Detective Pledger testified that the substances were in substantially the same or similar condition as the items seized from appellant. This argument lacks merit as well.

The purpose of establishing a chain of custody is to prevent the introduction of physical evidence that has been tampered with or is not authentic. *Jones v. State,* 82 Ark. App. 229, 105 S.W.3d 835 (2003). The trial court must be satisfied within a reasonable probability that there has been no tampering with the evidence. *Id.* We do not reverse a trial court's ruling on the

admissibility of evidence absent a showing that it clearly abused its discretion. *Id.*

Appellant is correct that proof of the chain of custody for interchangeable items, like drugs or blood, must be more conclusively established. *See Crisco v. State,* 328 Ark. 388, 943 S.W.2d 582 (1997). However, there is no evidence in the instant case of a break in the chain of custody, and there is no allegation nor evidence of tampering. Officer McKenzie positively testified that State's Exhibits One through Four were those that he took from appellant's possession. Detective Pledger was also positive in his testimony that the State's exhibits were those that he had received from Officer McKenzie and which he had sealed, tagged, and forwarded to the crime lab under agency number 2004-LIT-18235. The chemist testified as to receiving and testing the items marked 04-LIT-18235. The trial court did not abuse its discretion in allowing the evidence to be introduced.

Affirmed.

BIRD and GLOVER, JJ., agree.